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In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 375

UNITED STATES OF AMERICA, PETITIONER

v.

CALIFORNIA CO-OPERATIVE CANNERIES

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

No opinion was filed by the Court of Appeals when denying the motion to vacate its former judgment.

JURISDICTION

The judgment of the Court of Appeals was entered May 18, 1928. (R. 321.) Petition for certiorari was filed August 18, 1928, and granted October 22, 1928. Jurisdiction of this Court is invoked under Sec. 240(a), Judicial Code, Act of February 13, 1925.

QUESTION PRESENTED

The question presented in this case is whether the Court of Appeals of the District of Columbia had jurisdiction to entertain an appeal from a final decree of the Supreme Court of the District of Columbia, entered in a suit in equity brought by the United States under the Sherman Antitrust Act, denying the application of a third party for leave to intervene in such suit.

STATUTES INVOLVED

Section 226, District of Columbia Code, which confers general appellate jurisdiction upon the Court of Appeals of the District of Columbia, provides:

> Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said court of appeals; and upon such appeal the court of appeals shall review such order, judgment, or decree, and affirm, reverse, or modify the same as shall be just, except as provided in the following sections. Appeals shall also be allowed to said court of appeals from all interlocutory orders of the supreme court of the District of Columbia, or by any justice thereof, whereby the possession of property is changed or affected, such as orders for the appointment of receivers, granting injunctions, dissolving

> writs of attachment, and the like; and also from any other interlocutory order, in the discretion of the said court of appeals, whenever it is made to appear to said court upon petition that it will be in the interest of justice to allow such appeal.

But Section 2 of the Expediting Act of February 11, 1903, c. 544, 32 Stat. 823 (U. S. C. Title 15, Sec. 29), which governs appeals from final decrees in suits in equity brought by the Government under Federal antitrust laws, provides:

> That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said Acts [enumerated in Sec. 1, and including the Sherman Act], wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof * * *.

STATEMENT OF CASE

In 1920 the United States brought suit in equity in the Supreme Court of the District of Columbia under the Sherman Antitrust Act of 1890, c. 647, 26 Stat. 209, against the five principal meat packers and their subsidiaries, charging them with an attempt to monopolize the nation's food supply, and alleging that, as a means to that end, they were engaged in the business of handling wholesale groceries, canned fruits, and other commodities unrelated to the meat-packing industry. (R. 1–17.)

The defendants filed answers (R. 18–115), but did not stand trial on any issues of fact therein presented. They consented to the entry of an injunction decree against them, restraining them, among other things, from handling these unrelated commodities, including canned fruits. (R. 118–131.) The validity of this decree has recently been sustained by this Court. (*Swift & Company* v. *United States*, 276 U. S. 311.)

In 1922 the California Cooperative Canneries filed in the same court their motion for leave to intervene in this suit (R. 147), accompanied by their intervening petition (R. 147–218). In this petition the Canneries alleged a contract with Armour and Company, one of the defendants, under which that company was purchasing annually a large portion of their output of canned fruits (R. 148–152); and that as a result of the consent decree Armour & Company had been compelled to discontinue the performance of this contract.* This, the Canneries claimed, constituted a deprivation of their contract rights without due process of law. In its final decree of May 8, 1923 (R. 304), the court denied this application and the Canneries appealed to the Court of Appeals of the District of Columbia.

That court, on June 2, 1924, rendered its decision (299 Fed. 908; R. 308) and judgment (R. 315), and on June 20 following issued its mandate thereon (R. 315), reversing the decision of the Su-

* This contract would in any case expire according to its terms this coming January 1, 1929. (R. 152.)

preme Court below, and ordering "that the appellant be allowed to intervene and such further proceedings thereupon be had as are necessary to determine the issue raised by the appellant's petition." It is this judgment and mandate that the United States now seeks to have vacated and set aside on the ground that the appeal therein determined was beyond the jurisdiction of that court.

In the proceedings which followed in the Supreme Court of the District of Columbia pursuant to the Court of Appeals' mandate, the Canneries, and also the Swift and Armour groups of defendants, filed motions to vacate the consent decree of 1920 as null and void. Without hearing any evidence upon the issues raised by the Canneries' petition in intervention and the Government's answer thereto, the court, by its order of May 1, 1925, denied the Swift and Armour motions, but granted the Canneries' motion so far as to suspend the operation of the decree as a whole pending a hearing on the merits. (See Transcript of Record in *Swift & Co.* v. *United States*, No. 181, Oct. Term, 1927, pp. 313, 318, 322, 334, 341.)

The Swift and Armour defendants took appeals to the Court of Appeals of the District of Columbia. These appeals finally came to this Court and were determined by its decision of March 19, 1928, *supra*, sustaining the Supreme Court below and the validity of the consent decree of 1920, and holding that the Court of Appeals was without jurisdiction over the Swift and Armour appeals.

The United States then filed motion in the Court of Appeals (R. 317) to set aside for lack of jurisdiction its judgment of June 2 and mandate of June 20, 1924, above referred to, on the ground that the appeal therein determined was likewise removed from its jurisdiction by the Expediting Act of 1903. This motion was denied by the court without opinion, May 18, 1928 (R. 321), and it is this decision which is now before this Court for its review upon writ of certiorari.

SPECIFICATION OF ERRORS

1. The Court of Appeals erred in denying the motion of the United States to vacate its judgment and mandate of 1924 as without jurisdiction.

2. The Court of Appeals erred in holding that it had jurisdiction over the appeal of the California Cooperative Canneries from the order of the Supreme Court of the District of Columbia denying the Canneries' application for leave to intervene.

3. The Court of Appeals erred in refusing to hold that said appeal of the California Cooperative Canneries was within the provisions of Section 2 of the Expediting Act of 1903.

SUMMARY OF ARGUMENT

The judgment of any court rendered without jurisdiction is void, and it is the duty of such court to set it aside on motion by the party against whom it was rendered.

A decree denying application for leave to intervene is final, and when the same is made in an anti-trust suit in equity brought by the United States, an appeal from such decree lies only to this Court under Section 2 of the Expediting Act. It is immaterial that the final decree in question is not the one disposing of the issues of the principal suit, or that it was entered in determination of an intervener's rights.

Substantial relief to the Government will result from the reversal of the Court of Appeals' judgment of May 18, 1928, refusing to vacate its judgment and mandate of 1924, since upon the former judgment rests the lower court's order suspending entirely the consent decree of 1920.

ARGUMENT

1. The decision or judgment of any court rendered without jurisdiction is void.

Galpin v. *Page*, 18 Wall. 350, 373.
Elliott v. Peirsol, 1 Pet. 328, 340.
Shriver's Lessee v. *Lynn*, 2 How. 43, 60.
Williamson v. *Berry*, 8 How. 495, 541–542.
Morse v. *U. S. to the use of Hine*, 29 App. D. C. 433, 439.
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Tenney v. *Taylor*, 1 App. D. C. 223, 227.
Harper v. *Cunningham*, 8 App. D. C. 430, 439.
Macfarland v. *Saunders*, 25 App. D. C. 438, 441.

It is immaterial that the void decree is that of an appellate court rather than a court of original jurisdiction. In *Hickey* v. *Stewart*, 3 How. 750, this Court declared void for lack of jurisdiction a judgment of the Supreme Court of the State of Mississippi. In *Ex Parte Crenshaw*, 15 Pet. 119, this Court set aside, for lack of jurisdiction over the parties, its own judgment and mandate rendered at a previous term on appeal from a United States Circuit Court, the appellee never having been served with citation on appeal.

2. It is the duty of the court which entered a void judgment to vacate and set it aside on motion or application by the party against whom it was rendered.

Ex Parte Crenshaw, supra.

United States v. *Rothstein*, 187 Fed. 268.

Mossew v. *United States*, 266 Fed. 18.

Morse v. *United States to the use of Hine*, 29 App. D. C. 433.

Crane v. *Barry*, 47 Ga. 476.

City of Olney v. *Harvey*, 50 Ill. 453.

Hervey & Co. v. *Edmunds*, 68 N. C. 243.

Mills & Co. v. *Dickinson & Mills*, 6 Rich. Law (S. C.) 487.

Cooley's "Constitutional Limitations," 7th Ed., p. 576.

I Freeman on Judgments, 5th Ed., Sec. 273.

I Black on Judgments, 2nd Ed., Secs. 303, 318.

3. A decree denying an application for leave to intervene is final.

Stich v. *Dickinson*, 38 Cal. 608.
People v. *Pfeiffer*, 59 Cal. 89.
Henry v. *Travelers' Insurance Co.*, 16 Colo. 179.
Rollins v. *Rollins*, 76 N. C. 264.
Schlieder v. *Martinez*, 38 La. Ann. 847.
Harman v. *Barhydt*, 20 Neb. 625.
Bass v. *Fontleroy*, 11 Tex. 698.

4. When such a decree is entered in an antitrust suit in equity brought by the United States, it is within Section 2 of the Expediting Act, and can be appealed only to this Court. This is the result of the express language of Section 2, which refers to final decrees in such suits without qualification or discrimination.

It is immaterial that the decree does not finally dispose of the issues of the principal suit. *Swift & Company* v. *United States*, 276 U. S. 311. In that case the final decree in question passed only on certain jurisdictional questions concerning the earlier decrees which did dispose of the issues in the principal suit—questions which depended for their determination, not upon the statutory antitrust laws, but upon general principles of court jurisdiction. This Court held, nevertheless, that the Court of Appeals had no jurisdiction over the appeals from the final decree in question; and the effect of its decision is that no test can be read into the

Expediting Act whereby part of the final decrees therein generally referred to can be excluded from its meaning. No adequate selection can be made on the basis of what the decree decides. The Act concerns appeals, and if any particular test of finality is to be used, it must be finality for purposes of appeal.

It is likewise immaterial that the decree appealed from was entered upon the application of an intervener. It was nevertheless a final decree in the principal suit. The public interest is bound up with the principal suit, and it was the purpose of the Expediting Act to advance that public interest by enabling the earlier final determination of the suit and the effective enforcement of its decrees. Anything that interferes with that object is within the spirit of the Act, and, if also within its letter, should not be excluded from its meaning. It will certainly interfere with the expeditious progress of antitrust litigation if third party interveners may stay its course while dragging through intermediate appellate courts the final decrees entered in determination of their rights. For if such decrees are not within the Expediting Act, there is no law requiring priority to be given to their determination. The importance of such expedition seems most persuasively illustrated by the six years' litigation that have resulted in this case from the Canneries' application to intervene, including the sus-

pension in toto of the operation of the consent decree of 1920, and with it the entire loss to the Government of the fruits of the principal suit.

Continental Insurance Co. v. *United States*, 259 U. S. 156, is in point. Certain insurance companies had come in as interveners to protect their interests as minority stockholders in the dissolution of the Reading Company in execution of a mandate of this Court in *United States* v. *Reading Company* 253 U. S. 26. The lower court entered a decree adjudicating the rights of these interveners. They took appeals to this Court. In the *Insurance Company case, supra*, these appeals were entertained and determined, the Court expressly recognizing at the beginning of its opinion (p. 165) that they came up under the Expediting Act.

5. Substantial relief to the Government depends upon the reversal of the Court of Appeals' judgment of May 18, 1928.

The decree of the Supreme Court of the District of Columbia of May 8, 1923, denying the Canneries' application to intervene was final. (See paragraph 3, *supra*.) A court has no power to alter or set aside its final judgments or decrees after the expiration of the term at which they were entered, except for jurisdictional invalidity and certain formal defects not here involved. *Bank of United States* v. *Moss*, 6 How. 31; *Ex Parte Sibbald* v. *United States*, 12 Pet. 488; *Bronson* v. *Schulten*, 104 U. S. 410; *Phillips* v. *Negley*, 117 U. S. 665; *United States*

v. *Mayer*, 235 U. S. 55. By the lower court's decree of May 8, 1923, therefore, its denial of the Canneries' right to intervene in this suit became *res judicata;* and until the receipt of the Court of Appeals' mandate of June 20, 1924, the lower court had no jurisdiction or authority to alter or set aside that decree or to take any other proceedings not in harmony with it.

The Court of Appeals' mandate directed further proceedings in the Supreme Court below to determine the issues raised in the Canneries' intervention. In the course of those proceedings the latter court, by its order of May 1, 1925, suspended the consent decree of 1920, pending further litigation. As above explained, these proceedings rested solely upon the authority of the Court of Appeals' judgment and mandate; and if the latter are invalid for lack of jurisdiction, the proceedings under them are void, and it is useless to carry them further. The order of suspension, being a part of them, is likewise void, and must fall with them. Thus, the consent decree of 1920 heretofore held valid by this Court, will then be restored to operative effect and rendered enforceable by the Government and by the courts.

CONCLUSION

For these reasons it is respectfully submitted that the Court of Appeals' judgment of May 28, 1928, should be reversed, and that its judgment and

mandate of 1924 should be vacated and set aside as void for want of jurisdiction.

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NOVEMBER, 1928.

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